CC Docket #96-98

[redacted]

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

EX PARTE OR LATE FILED

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Fax: 617/542-2241

Telephone: 202/434-7300
Fax: 202/434-7400
www.Mintz.com

Donna N. Lampert
Internet Address
dnlamper@mintz.com

Direct Dial Number
202/434-7385

June 11, 1998

RECEIVED
AUG 12 1998

EX PARTE

BY HAND
Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reciprocal Compensation -- CCB/CPD 97-30, Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic

Dear Ms. Salas:

On June 11, 1998, Steven Teplitz (Senior Counsel - Law and Public Policy) of America Online, Inc. ("AOL"), and I met with Jane Jackson (Chief); Ed Krachmer (Attorney); Dana Bradford (Attorney); and Tamara Preiss (Attorney) all of the Competitive Pricing Division, to discuss the comments of AOL in the above-referenced docket. We also discussed the attached document which was distributed at this meeting.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, two copies of this Notice are attached for inclusion in the public record in the above-captioned proceedings. Should you have any questions regarding this matter, please contact me.

Sincerely,

Donna N. Lampert

cc: Jane Jackson (w/encl.)
Ed Krachmer (w/encl.)
Dana Bradford (w/encl.)
Tamara Preiss (w/encl.)

DCDOCS: 129860.1 (2s78011.doc)

Reciprocal Compensation and ISP Traffic

- There is no valid economic reason to change the current reciprocal compensation rules
- In recent *ex parte* letters, Southwestern Bell Telephone Company ("SWBT") attempts to show that it would lose $363.55 per month in providing service to a business customer that maintains a permanent connection to an ISP served by a CLEC
- The SWBT example is flawed
  - The hypothetical customer used in the example does not reflect normal customer usage
  - Key attributes of the reciprocal compensation scheme are ignored by SWBT
    * When a CLEC terminates an ILEC's traffic, the ILEC avoids termination costs
    * Reciprocal compensation rates vary significantly; the SWBT example is nearly double the average rate
    * SWBT and other ILECs receive benefits from reciprocal compensation, e.g., ILECs are recipients of reciprocal compensation from CLECs and CMRS carriers
  - The example does not account for second line revenue

There Are Numerous Problems With the Particular Example Used by SWBT

- It is preposterous to assume that a customer would log on 24 hours per-day, 7 days per-week
  - ISPs discourage full-time connections
    * Full-time connections consume costly lines between the ISP and the LEC and use costly port capacity on ISP servers so that many ISPs terminate inactive connections after a set period of time
  - The average Internet/online customer spends an average of 397 minutes per-month [Media Metrix, Inc., March, 1998, at 1] (Not the 43,200 minutes per-month assumed by SWBT in its example)
  - It is also unrealistic to assume an individual business customer would tie up its line 24 hours per-day, 7 days per-week
  - The individual business line customer described by SWBT would have no ability to receive or send calls over the line
  - Only a multi-line customer could afford to tie up a line with a full-time connection
- Even multi-line customers are unlikely to dedicate a switched line to a full-time Internet connection
  - Small businesses generally access ISPs through a modem pool, which establishes connections on a demand basis
  - Larger business customers generally use a dedicated non-switched circuit from their LAN-based router to their ISP

The SWBT Example Ignores Key Features of the Reciprocal Compensation Regime

- Reciprocal compensation is designed to reimburse carriers for the costs incurred in terminating calls
  - ILECs avoid termination costs when the CLEC terminates the call
  - Therefore, it should cost SWBT the same to terminate the call, whether it does so itself or it pays the CLEC to perform the function
- Internet traffic is functionally the same as other local traffic
  - For example, an Internet call that is 30 minutes long imposes the same costs as a 30 minute voice call
- Reciprocal compensation applies to all terminating traffic, not just Internet/online traffic
  - When ILECs terminate traffic from CLECs, compensation is paid to SWBT
  - ILECs terminate the overwhelming majority of traffic from CMRS carriers
    - Wireless minutes approximately 5% of all traffic and growing by over 20 percent per year [Merril Lynch, Wireless in the US, March 10, 1998, p.32]
- Few reciprocal compensation rates are at $.009; the rough average is $.005 per-minute
- SWBT concedes that the dollars involved in reciprocal compensation are much smaller than their example would indicate
  - Even the May 8 SWBT ex parte shows that payments by SBC for all its regions (including California) to CLECs for Internet are estimated at only $31.3 million in 1998
  - SWBT claims that SBC access revenues at risk from Internet usage are only $2.7 million compared with SBC operating revenues of roughly $20 billion, or approximately, 1/100th of a percent (.0135%)

The Example Used by SWBT Ignores Second Line Revenues

- The SWBT example ignores the substantial net revenue ILECs receive from second lines
  - Second lines can be provisioned for between 10 and 15 percent of the embedded cost of the existing line because otherwise idle excess capacity can be put to use
  - In a Texas PUC arbitration proceeding, SWBT itself advocated a distribution fill factor of .4, implying 60 percent excess capacity [Texas PUC Mega-Arbitration Award, November 7, 1996, p.32]

A More Realistic Example

- Assumptions:
  - A residential customer purchases an additional line to accommodate growing local usage due to demand for Internet/online service connection time
  - Revenues from the additional line are approximately $18.62 (nationwide average rate for local residential service of $13.62 plus a $5.00 second line subscriber line charge)
  - The incremental cost of provisioning the line, assuming spare capacity in the local network, is $4.00
  - The reciprocal compensation rate is $.005
  - The customer generates an average of 397 minutes per-month of Internet usage
  - In this example, the ILEC pays $1.98 per-month in reciprocal compensation (397*.005), but generates $14.62 in incremental revenue ($18.62 additional line revenue - $4.00 incremental cost)
  - Instead of losing $363.55 per customer per-month, the ILEC would generate $12.64 in net revenue per-month
  - This example ignores the ILEC cost savings when the CLEC terminates the call